

APPLETON

September 1, 2010

EPA Region 5 Records Ctr.



384655

VIA COURIER

Leslie A. Kirby-Miles
Associate Regional Counsel
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604-3590

RE: Response of Appleton Papers Inc. to the United States Environmental Protection Agency Request for Supplemental Information Pursuant to Section 104(e) of CERCLA for the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site in Allegan and Kalamazoo Counties, Michigan, Dated July 27, 2010

Dear Ms. Kirby-Miles:

This letter, along with the accompanying materials, constitute Appleton Papers Inc.'s Response to the United States Environmental Protection Agency Request for Supplemental Information Pursuant to Section 104(e) of CERCLA for the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site in Allegan and Kalamazoo Counties, Michigan, dated July 27, 2010.

Sincerely,

Benjamin Mieliulis
Sr. Intellectual Property Counsel and Assistant Secretary

BM/pn
Enclosure

RESPONSE OF APPLETON PAPERS INC.
TO THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY'S
REQUEST FOR SUPPLEMENTAL INFORMATION PURSUANT TO
SECTION 104(e) OF CERCLA FOR THE ALLIED PAPER, INC./PORTAGE CREEK/
KALAMAZOO RIVER SUPERFUND SITE IN ALLEGAN AND
KALAMAZOO COUNTIES, MICHIGAN, DATED JULY 27, 2010

Appleton Papers Inc. ("API") hereby responds to the July 27, 2010, Request for Supplemental Information ("Supplemental Information Request") from the United States Environmental Protection Agency ("EPA") received by API on August 2, 2010.

API expressly denies any liability for alleged response costs, damages to natural resources, restoration costs, or other damages or costs arising out of the alleged contamination of the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site in Allegan and Kalamazoo Counties, Michigan ("Kalamazoo River Site"). Nothing in the following responses to the Supplemental Information Request should be construed as a waiver of any defenses that may be available to API, including but not limited to defenses under any state or federal statute, judicial decision, rule, regulation, and/or policy.

Subject to and without waiving any of the objections stated subsequently in this Response, API responds as follows:

PRELIMINARY STATEMENT

As is set forth on the first page of the Supplemental Information Request, the Supplemental Information Request arises from EPA's investigation of the release or threat of release of polychlorinated biphenyls ("PCBs") at the Kalamazoo River Site and its desire to determine what extent API sold, either directly or indirectly through waste paper brokers, paper broke generated at API paper coating mills to any of the secondary fiber pulp and paper mills located on or near the Kalamazoo River for the period of 1954 to 1971. At the outset, API did not sell any paper broke to any such pulp or paper mills, either directly or indirectly through secondary fiber brokers, between 1954 and 1971. It was not until 1978 that API acquired the facilities referred to as the "API paper coating mills" in the Supplemental Information Request.

A brief chronology of the so-called "paper coating mills" may help correct this misunderstanding. From prior to 1954 until approximately 1970, Appleton Coated Paper Company owned a paper coating facility in Appleton, Wisconsin ("Appleton Plant"). In 1970, Appleton Coated Paper Company and the Appleton Plant were acquired by the National Cash Register Company ("NCR").

From prior to 1954 until 1969, Combined Paper Mills, Inc., owned a paper mill in Combined Locks, Wisconsin ("Combined Locks Mill"). In 1969, Combined Paper Mills, Inc., and the Combined Locks Mill were acquired by NCR.

In 1971, NCR merged Combined Paper Mills, Inc., and Appleton Coated Paper Company into a single corporation called Appleton Papers, Inc. (note the comma after "Papers"). In 1973, Appleton Papers, Inc., was merged into NCR and became the Appleton Papers division of NCR, which formally changed its name to NCR Corporation in 1974.

In 1978, Lentheric, Inc., a cosmetic company incorporated in 1965, purchased certain assets of the Appleton Papers Division, including the Appleton Plant and the Combined Locks Mill. Prior to 1978, Lentheric, Inc., had no relationship with NCR, the Appleton Plant, or the Combined Locks Mill. After the purchase of these assets, Lentheric, Inc., changed its name to Appleton Papers Inc. (no comma), the recipient of this Supplemental Information Request. Appleton Papers, Inc., is not the same corporation as Appleton Papers Inc. or API.

In 1999, API transferred its Coated Free Sheet Division and all assets related thereto, including the Combined Locks Mill, to Appleton Coated LLC, a 100% owned subsidiary. In 2000, API sold Appleton Coated LLC to Appleton Coated Papers Holdings Inc. Thus, as of 2000, API no longer owns the Combined Locks Mill; it currently owns only the Appleton Plant.

OBJECTIONS

1. API objects to the Supplemental Information Request to the extent it seeks information that is not relevant to alleged contamination at the Kalamazoo River Site and is not calculated to lead to the discovery of relevant information with respect to such contamination.

2. API objects to the Supplemental Information Request to the extent it seeks information beyond the scope of categories of information set forth in CERCLA § 104(e)(2), 42 U.S.C. § 9604(e)(2).

3. API objects to Requests 3, 4 and 5 to the extent they are not restricted to the relevant time period set forth on pages 1 and 2 of the Supplemental Information Request or restricted by geography to the Kalamazoo River Site. API has interpreted the Supplemental Information Request as referring only to sales of PCB-containing CCP and PCB-containing CCP broke to pulp and paper mills located at or near the Kalamazoo River Site between 1954 and 1971.

4. API objects to the Supplemental Information Request to the extent it seeks information concerning papers or broke that did not contain PCBs. API has interpreted the Supplemental Information Request as referring only to PCB-containing CCP and PCB-containing CCP broke.

5. API objects to the Supplemental Information Request to the extent it is unduly burdensome, oppressive, overbroad, and unreasonable.

6. API objects to the Supplemental Information Request to the extent it seeks information protected by the attorney-client privilege, the attorney work-product rule, or any other applicable privilege or rule that protects such information from disclosure.

7. API objects to the Supplemental Information Request to the extent it seeks information or documents already in the public domain or already in the possession of EPA or any other federal agency.

RESPONSES

Request No. 1:

Identify all persons consulted in the preparation of the answers to this Information Request.

Response to Request No. 1:

API consulted with any person potentially possessing information regarding the stated purpose of this Supplemental Information Request in conjunction with responding to prior Information Requests regarding both the Kalamazoo River Site and the Fox River Site; the names of such persons are included in API's responses thereto.

Request No. 2:

Identify all documents consulted, examined, or referred to in the preparation of the answers to this Information Request, and provide copies of all such documents.

Response to Request No. 2:

API objects to this request on the grounds that it is unreasonably broad and overly burdensome, seeks information that may be subject to claims of confidentiality, privilege, etc., and seeks materials which are not reasonably likely to result in the production of documentation responsive to determining the injury, and resulting damages to natural resources and the appropriate and necessary restoration and compensation. By way of example (but not limitation), in the course of preparing this Response, API reviewed available documentation for the purpose of determining whether such documentation was in fact responsive to the Supplemental Information Request, had previously been provided to EPA, is publicly available, was duplicative, etc. To the extent such documentation is non-responsive, has previously been provided to EPA by API (or other parties), is publicly available, or is duplicative, API has neither identified nor furnished copies of such documentation. API assumes that this request is not intended to cover such materials.

Request No. 3:

If you have reason to believe that there may be persons able to provide a more detailed or complete response to any request included in this Information Request or who may be able to provide additional responsive documents, identify such persons.

Response to Request No. 3:

As explained in greater detail below, API has not located any records or other documentation evidencing sales of PCB-containing CCP broke from the Appleton Plant specifically to secondary fiber pulp and paper mills in the Kalamazoo, Michigan, area, which is the focus of this Supplemental Information Request. This is consistent with API's good faith belief that no such sales occurred. Therefore, API is unaware of any persons able to provide a more detailed or complete response to any request included in this Supplemental Information Request or able to provide additional responsive documents. In addition, see the Response of Appleton Papers Inc. to the March 18, 2003, United States Environmental Protection Agency's Request for Information Regarding the Kalamazoo River.

Request No. 4:

Identify the acts or omissions of any persons, other than your employees, contractors, or agents, that may have caused the release or threat of release of hazardous substances, pollutants, or contaminants, and damages resulting therefrom.

Response to Request No. 4:

API objects to this request on the ground that it is overly broad. The stated purpose of the Supplemental Information Request is the investigation of the release or threat of release of PCBs at the Kalamazoo River Site and EPA's desire to determine what extent API sold, either directly or indirectly through waste paper brokers, paper broke generated at API paper coating mills to any of the secondary fiber pulp and paper mills located on or near the Kalamazoo River for the period of 1954 to 1971. Accordingly, API's response to this Request solely focuses on this stated purpose. Notwithstanding and subject to said objection and without waiving the same, API responds as follows:

Any person or entity that discharges or discharged directly or indirectly to the Kalamazoo River Site may have caused the release of hazardous substances to the Kalamazoo River Site. API has no information regarding such acts or omissions.

Request No. 5:

Identify all persons having knowledge or information about the generation, transportation, treatment, disposal, or other handling of hazardous substances by you, your contractors, or by prior owners and/or operators.

Response to Request No. 5:

API objects to this request on the ground that it is overly broad. The stated purpose of the Supplemental Information Request is the investigation of the release or threat of release of PCBs at the Kalamazoo River Site and EPA's desire to determine what extent API sold, either directly or indirectly through waste paper brokers, paper broke generated at API paper coating mills to any of the secondary fiber pulp and paper mills located on or near the Kalamazoo River

for the period of 1954 to 1971. Accordingly, API's response to this Request solely focuses on this stated purpose. Notwithstanding and subject to said objection and without waiving the same, API responds as follows:

As noted in the Preliminary Statement above, API acquired the Appleton Plant in 1978, after the use of PCBs for manufacturing carbonless paper had ceased. Accordingly, API is unaware of any persons having knowledge or information about the generation, transportation, treatment, disposal, or other handling of PCBs at or near the Kalamazoo River site. In addition, see the Response of Appleton Papers Inc. to the March 18, 2003, United States Environmental Protection Agency's Request for Information Regarding the Kalamazoo River.

Request No. 6:

In your response to EPA's March 18, 2003 Request for Information, under "Response to Request No. 3," you stated that "the personnel responsible for selling broke specifically recall that all PCB-containing [Carbonless Copy Paper] CCP broke produced at these two facilities [Appleton Plant and Combined Locks mill] was sold to brokers or Lower Fox River recycle mills for valuable consideration." Provide the names and last known addresses of the personnel referred to in your statement.

Response to Request No. 6:

As stated in the Response of Appleton Papers Inc. to the Request for Information Issued by the U.S. Department of the Interior ("DOI") dated June 10, 1998, Regarding the Fox River and Green Bay Natural Resources Damage Assessment, the following individuals may have information regarding the purchase, sale or use of broke at the Appleton Plant for the period 1954 to 1972:

Fred Heinritz
Don Christensen
Bob Hietpas
Floyd Strelow
Dan Van Boxtel

All individuals can be contacted via API's counsel:

Hermes Law, Ltd.
333 Main Street, Suite 601
Green Bay, WI 54301
(920) 436-9870

API's response to the June 10, 1998, Request also provided the names of three other individuals: Harry Langman, Adrian VanGeffen, and Phil Graf. These individuals are deceased.

Request No. 7:

Identify each shipment of CCP broke that was sent from an API owned or operated facility directly or indirectly through a waste paper broker, to any of the secondary fiber pulp and paper mills located on or near the Kalamazoo River in Michigan. For each such shipment, identify: (a) the date (month and year) of the shipment; (b) the amount (in pounds) of CCP broke shipped; and (c) the name and address of the entity to which the shipment was sent.

Response to Request No. 7:

This Request is essentially identical to Request No. 2 submitted to API as part of EPA's March 18, 2003, Request for Information Regarding the Kalamazoo River Site. As API indicated in its response to said Request, API conducted a diligent search to try to locate records or other documentation evidencing sales of PCB-containing CCP broke from the Appleton Plant specifically to secondary fiber pulp and paper mills in the Kalamazoo, Michigan, area. Subsequent searches for records in conjunction with other matters, including searches for records concerning broke sales, were conducted as well. No records were found. This is consistent with API's good faith belief that there were no such sales.

As you are aware, API has already produced thousands of pages of documents to the Department of the Interior and EPA in connection with the Fox River matter, including, most recently, all documents produced in *Appleton Papers Inc., et al. v. George A. Whiting Paper Company, et al.*, Case No. 08-CV-00016-WCG in the United States District Court for the Eastern District of Wisconsin – Green Bay Division, a matter to which the United States of America is a consolidated party. These documents include documents concerning the sale of PCB-containing CCP broke produced at the Appleton Plant. EPA may wish to consult this available information as part of its investigation if it requires additional information concerning the sale of PCB-containing CCP broke produced at the Appleton Plant.

Request No. 8:

Describe API's current and previous (since 1954) relationship to the following companies: National Cash Register Company, NCR Corporation, Systemedia, Appleton Coated Paper Company, and Appleton Coated LLC.

Response to Request No. 8:

API objects to the use of the term "relationship" on the ground that it is ambiguous and subject to multiple interpretations. Notwithstanding and subject to said objection and without waiving same, please see the Preliminary Statement set forth above.

In addition, API shares a customer-based relationship with NCR Consumables, formerly known as NCR Systemedia. Pursuant to a supply agreement, NCR Consumables purchases items such as thermal paper and carbonless copy paper from API.

Request No. 9:

Provide a narrative of API's corporate history to date, beginning with the founding of Appleton Coated Paper Company in 1907. Include a description of the primary functions and responsibilities of each entity.

Response to Request No. 9:

API did not come into existence until 1978. For an explanation of entities that owned the Appleton Plant prior to 1978, please see the Preliminary Statement set forth above.

In 1978, Lentheric, Inc., a wholly owned subsidiary of BAT Industries, Inc., acquired the assets of the Appleton Papers division of NCR. Lentheric, Inc., then changed its name to API.

In 2001, Paperweight Development Corp. and a subsidiary acquired 100% of API's stock. Paperweight Development Corp. is entirely owned by the employee stock ownership plan component of The Appleton Papers Retirement Savings and Employee Stock Ownership Plan ("ESOP"). Thus, API currently is a 100%-owned subsidiary of Paperweight Development Corp., which is entirely owned by the ESOP.